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SUPREME COURT

DANIEL ANGLAND and DANIEL
WHEELER, CO-ADMINISTRATORS OF
THE ESTATE OF ROBERT E.
ANGLAND, and CHARLES JOHNSON
IV, ADMINISTRATOR OF THE ESTATE
OF NANCY ANGLAND,

Plaintiff,

v.
MOUNTAIN CREEK RESORT, INC., a
New Jersey Corporation and/or
ABC CORPORATION (a fictitious
name), WILLIAM TUCKER BROWNLEE,
JOHN DOE 1-5 and RICHARD ROE 1-
5

Defendants.

MOUNTAIN CREEK RESORT, INC., a
New Jersey Corporation,
Third Party Plaintiff,

v.
WILLIAM TUCKER BROWNLEE, an
individual,
Third Party defendant.

SUPREME COURT OF NEW JERSEY
DOCKET NO.: 069461

APPELLATE DIVISION
DOCKET NO.: AM-3100-10

LAW DIVISION: SUSSEX COUNTY
DOCKET NO.: SSX-L-474-08

Civil Action

APPEAL FROM THE INTERLOCUTORY
DECISION OF THE APPELLATE
DIVISION

Sat Below:

Hon. Ariel A. Rodriguez

Hon. Christine L. Miniman

**BRIEF OF DEFENDANT-RESPONDENT MOUNTAIN CREEK RESORT, INC.
IN OPPOSITION TO WILLIAM TUCKER BROWNLEE'S APPEAL**

Samuel J. McNulty, Esq.

*Of Counsel and On the Brief for
Defendant-Respondent, Mountain Creek Resort, Inc.*

John F. Gaffney, Esq.

Stephen H. Shaw, Esq.

On the brief

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
PRELIMINARY STATEMENT	1
STATEMENT OF PROCEDURAL HISTORY	2
STATEMENT OF MATERIAL FACTS	5
LEGAL ARGUMENT	
POINT I	
THE PLAIN MEANING OF THE LANGUAGE AND THE LEGISLATIVE HISTORY OF THE NEW JERSEY SKI STATUTE, <u>N.J.S.A. 5:13-1 ET SEQ.</u> ESTABLISH A 'KNOWINGLY" STANDARD OF CARE FOR SKIER- SKIER COLLISIONS.	7
POINT II	
THE <u>SCHICK</u> AND <u>CRAWN</u> CASES DO NOT SUPPORT APPLICATION OF A "RECKLESSNESS" STANDARD IN THE FACE OF THE NEW JERSEY SKI STATUTE	12
POINT III	
CASE LAW FROM OTHER JURISDICTIONS IS DISTINGUISHABLE AND NOT CONTROLLING IN THE FACE OF THE NEW JERSEY SKI STAUTE	15
CONCLUSION	20

TABLE OF AUTHORITIES

CASES

<u>Board of Ed. Of Manchester Tp., Ocean County v. Raubinger,</u> 78 N.J. Super. 90, 97 (App. Div. 1963)	9
<u>Brett v. Great American Recreation,</u> 144 N.J. 479 (1996)	1, 8, 11, 12
<u>Crawn v. Campo,</u> 136 N.J. 494 (1994)	13
<u>Dillworth v. Gambardella,</u> 970 F. 2d. 1113 (1992)	19, 20
<u>Hubner v. Spring Valley Equestrian Center,</u> 203 N.J. 184 (2010)	8
<u>Jagger v. Mohawk Mountain Ski Area,</u> 849 A.2 nd 813 (Conn. 2004)	16
<u>Jaworski v. Kiernan,</u> 241 Conn. 399 (1997)	16
<u>Matlack v Burlington Cty. Bd. of Chosen Freeholders,</u> 194 N.J. Super. 359, 361 (App. Div. 1984) <u>certif. den.</u> 99 N.J. 191 (1984).	9
<u>Murray v. Great Gorge Resort, Inc.,</u> 360 N.J. Super. 395 (Law Div. 2003)	10
<u>Nabozny v. Barnhill,</u> 31 Ill. App. 3d 212 (1975)	20
<u>Novak v. Virene,</u> 224 Ill. App. 3d 317 (1991)	20
<u>Reisman v. Great Am. Recreation, Inc.,</u> 266 N.J. Super. 87, 94-95 (App. Div.), <u>certif. denied,</u> 134 N.J. 560	15
<u>Schick v. Ferolito,</u> 167 N.J. 7 (2001)	13
<u>State v. Schumm,</u> 146 N.J. Super. 30, 33 (App. Div. 1977), <u>aff'd.</u> 75 N.J. 199 (1978).	9

Towns v. Davidson/Mammoth, 147 Cal.App.4th 461, 54 Cal.Rptr.3d 568 (2007)	16
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STATUTES

Alaska Stat. § 09.65.135 (1983);	16
Colo. Rev. Stat. § 33-44-101 to 114 (1984) and Colo. Rev. Stat. Ann. (West Supp. 1991);	16
Conn. Gen. State § 29-201 to -214 (1985);	16
Idaho Code §6-1101 to 1109 (1990);	16
ME. Rev. Stat. Ann. Tit. 26 §§ 488-490 (1984);	16
Mass Gen. Laws Ann. Ch. 143, § 71 H-S (West 1991);	16
Mich. Comp. Laws Ann. § 408-321-344 (West) 1985);	16
Mont. Code Ann. §23-2-731 to 736 (1991);	16
Nev. Rev. Stat. §455A.010-190 (1991);	16
N.H. Rev. Stat. Ann. § 225-A:1 to :26 (1989);	16
N.J.S.A. 1:1-1, General Rules and Construction	10
N.J.S.A. 5:13-1, The New Jersey Ski Statute	1,7,10,12
N.J.S.A. 5:13-4, Duties of Skiers	1,7,9
N.J.S.A. 2C:2-2.	13
N.M. Stat. Ann. §24-15-1 to -14 (Michie 1991)	16
N.Y. Labor Law § 865-868 (McKinney 1988);	16
N.C. Gen. Stat. § 99C-1 to -5 (Supp. 1985);	16
Ohio Rev. Code Ann. § 4169.01 to .99 (Balwin 1990);	16
OR. Rev. Stat. § 30.970 to .990 (1988);	16
42 Pa. Cons. Stat. Ann. § 7102(c) (1982);	16

R.I. Gen. Laws § 41-8-1 to -4 (1990);	16
Tenn. Code Ann. § 68-48-101 to -107 (1987);	16
Utah Code Ann. § 78-27-51 to -54 (1992);	16
Vt. Stat. Ann. Tit. 12 § 1037 (Supp. 1991);	16
Wash. Rev. Code Ann. § 70.117.010 to 040 (West Supp. 1992);	
W. Va. Code § 20-3A-1 to-8 (1988);	16
Wis. Stat. Ann. § 895.525 (West Supp. 1991).	16

PRELIMINARY STATEMENT

The New Jersey Ski Statute, N.J.S.A. 5:13-1 et seq. establishes that a collision between two skiers (or snowboarders) is an inherent risk of the sport for which there can be no recovery in a civil action in the absence of a violation of duty beyond the existence of mere negligence. The issue before the Court is whether the "knowingly" standard established in the Ski Statute at N.J.S.A. 5:13-4(b)(4) should be replaced with a common law "recklessness" standard. The appellant argues that the legislature purposefully left this issue to be determined by the common law. However, as will be emphasized herein, this Court has held in Brett v. Great American Recreation, 144 N.J. 479 (1996), "...where the Ski Statute properly applies, the Legislature intended to completely replace the common law with respect to statutorily defined parties." *id.* at 502.

The courts below properly recognized this holding and the petition should be denied and the prior decisions affirmed.

STATEMENT OF PROCEDURAL HISTORY

1. Plaintiff filed a Complaint against Mountain Creek on or about March 26, 2008 in the Superior Court of New Jersey, Law Division-Morris County, that was assigned docket number MRS-L-945-08. (Da1).
2. On June 10, 2008, defendant, Mountain Creek, filed an Answer to plaintiff's Complaint along with a Third Party Complaint against Brownlee. (Da8).
3. On or about July 24, 2008, the Honorable Michael Paul Wright entered an Order transferring venue from Morris to Sussex County. (Da20).
4. On or about January 6, 2009, plaintiff filed an Amended Complaint to include Brownlee as a direct defendant. (Da22).
5. On or about March 19, 2009, the firm of Burke & Potenza filed an Answer to the Amended Complaint on behalf of Brownlee. (Da30).
6. On or about January 22, 2010, plaintiff filed a Second Amended Complaint. (MC Da1)
7. On or about July 27, 2010, Brownlee filed a motion for summary judgment arguing that the New Jersey Ski Act was not applicable to claims between skiers, New Jersey applies a heightened standard of care of reckless or intentional conduct to participants in all recreational sports and there is no

evidence that William Brownlee breached the heightened standards of care. (Da36)

8. On August 31, 2010, the Hon. William J. McGovern denied Brownlee's motion for summary judgment and in the Order stated the following:

For the Reasons set forth on the record on August 31, 2010, and for the Reasons set forth in the attached Statement of Reasons. (Da38)

9. On September 20, 2010, Brownlee filed a Motion in the Appellate Division for Leave to Appeal from an Interlocutory Order. Brownlee again argued that the Ski Statute was not applicable to claims between skiers and there was no evidence that he breached the heightened standard of care. Brownlee sought reversal of the trial court's August 31, 2010 Order and judgment entered in his favor. (Da189)

10. On October 20, 2010, Judges Ariel A. Rodriguez and Christine L. Miniman denied Brownlee's Motion for Leave to Appeal. (Da192)

11. On or about November 5, 2010, Brownlee filed a Motion in the Supreme Court for Leave to Appeal from an Interlocutory Order of the Appellate Division. (Da193)

12. On February 10, 2011, the Supreme Court granted Brownlee's motion and remanded the matter to the Appellate Division to consider the appeal on the merits. (Da196).

13. On October 7, 2011, the Appellate Division issued a decision affirming the trial court's denial of summary judgment to Brownlee (DA-197).

14. On January 13, 2012, the Supreme Court granted leave to appeal which was posted on January 18, 2012.

STATEMENT OF FACTS

1. As Respondent, Mountain Creek adopts the Appellant's Statement of Facts except as supplemented below.

2. Brownlee purchased a season pass from Mountain Creek for the 2006-2007 ski season that contained the following language which Brownlee read and understood:

I acknowledge and agree to observe and to be bound by the New Jersey Ski Statute N.J.S.A. 5:13-1 et seq. and Your Responsibility Code, as published on the Skiers Guide and/or Trail Map. (Da73, T14:15-17:9 and Da181).

3. Brownlee was familiar with the Mountain Creek Trail Map that listed the three peaks of the mountain: Vernon Peak, Granite Peak and South Peak. Brownlee was also familiar with the designations of the type of trails which are green for beginner, blue for intermediate, black diamond for advanced and double black diamond for expert. Brownlee was also aware that the Lower Horizon trail, where the accident occurred, was designated by the code green representing a beginner trail. (Da73, T18:1-21:3 and Da183)

4. Included on the trail map was the Skier's Responsibility Code which Brownlee was familiar with and understood that it is the skier's responsibility to be safe on the mountain, stay in control, people ahead have the right of way, observe signs and warning, and keep off closed trails. (Da73, T24:3-12 and Da183).

5. The trail map further contains the following language:

LEGAL

Skiers' Responsibilities: The New Jersey Ski Statute (N.J.S.A. 5:13-1 et seq.) states that: "A skier is deemed to have knowledge and to assume the inherent risks of skiing, operating toboggans, sleds or similar vehicles created by weather conditions, conditions of snow, trails, slopes, other skiers, and all other inherent conditions. Each skier is assumed to know the range of his ability, and it shall be the duty of each skier to conduct himself within the limits of such ability, to maintain control of his speed and course at all times while skiing, to heed all posted warnings and to refrain from acting in a manner which may cause a contribute to the injury of himself or others." (emphasis added) (Da73, T24:18-25:11 and Da186).

LEGAL ARGUMENT

POINT I

THE PLAIN MEANING OF THE LANGUAGE AND THE LEGISLATIVE HISTORY OF THE NEW JERSEY SKI STATUTE, N.J.S.A. 5:13-1 ET SEQ. ESTABLISH A 'KNOWINGLY' STANDARD OF CARE FOR SKIER-SKIER COLLISIONS

The N.J. Supreme Court has recognized that the New Jersey Ski Statute N.J.S.A. 5:13-1 et seq. (hereinafter referred to as "N.J. Ski Statute" or "Ski Statute") completely replaces the common law with respect to the activities and persons it covers in Brett v. Great American Recreation, 144 N.J. 479, 502 (1996) when it held, "where the Ski Statute properly applies, the Legislature intended completely to displace the common law with regard to the statutorily defined parties." See generally Hubner v. Spring Valley Equestrian Center, 203 N.J. 184 (2010).

There can be no dispute that the Ski Statute applies to the issues raised relating to the claims of the parties in this case.

N.J.S.A. 5:13-4 is titled **Duties of Skiers** and states in relevant part as follows:

a. Skiers shall conduct themselves within the limits of their individual ability and shall not act in any matter that may contribute to the injury of themselves or any other person.

b. No skiers shall:

.....

(4) Knowingly [emphasis supplied] engage in any act or activity by his skiing or frolicking which injures other skiers while such other skiers are either descending any trail, or standing or congregating in a reasonable manner, and due diligence shall be exercised in order to avoid hitting, colliding with or injuring any other skier or invitee.

c. Every skier shall maintain control of his speed and course at all times, and shall stay clear of any snow grooming equipment, any vehicle, any lift tower and any other equipment on the mountain.

On its face, the Ski Statute provides that no civil cause of action can be maintained for mere negligence as it defines that a skier-skier collision (including snowboarders) is an inherent risk of the sport. Further, it establishes duties for the skier and states that a "knowingly" standard applies in subsection 4 above.

It is generally held that a Court will first look to the plain language of a statute, N.J.S.A. 1:1-1 for its meaning. Board of Ed. Of Manchester Tp., Ocean County v. Raubinger, 78 N.J. Super. 90, 97 (App. Div. 1963). Further, where the drafters of a statute did not consider a specific situation, a court should interpret the enactment "consonant with the probable intent of the draftsman 'had he anticipated the situation at hand.'" Matlack v Burlington Cty. Bd. of Chosen Freeholders, 194 N.J. Super. 359, 361 (App. Div. 1984) certif.

den. 99 N.J. 191 (1984). A literal interpretation of a statute will not be applied where to do so would distort the clearly expressed legislative intent. State v. Schumm, 146 N.J. Super. 30, 33 (App. Div. 1977), aff'd. 75 N.J. 199 (1978).

The New Jersey Ski Statute specifies not only the duties of skiers and snowboarders, but also sets forth a standard of care for them in the event of injury to another. See generally Murray v. Great Gorge Resort, Inc., 360 N.J. Super. 395 (Law Division 2003) (holding that the Ski Statute applied to snowboarders as well as to skiers). The Ski Statute sets a "knowingly" standard of care. The legislature did not establish a "negligence" standard nor did they establish a "recklessness" standard. They specified duties of skiers, which has been interpreted to apply also to snowboarders, and set forth a "knowingly" statutory standard in the event of conduct causing injury to another skier. This conclusion and interpretation is consistent with the plain language of the statute.

However, not only does the plain meaning of the language of the Ski Statute and its legislative history establish that it was the Legislature's intention to establish an enhanced negligence standard for skiers: "knowingly" engage in specified conduct, the Assembly Judiciary, Law, Public Safety and Defense Committee Statement to the Assembly Bill included under N.J.S.A. 5:13-4 indicates that the Committee proposed a number

of substantive amendments and describes their effects. One is the following:

"A number of the skier's responsibilities under the bill would be qualified. Several types of actions or activities for which a skier is responsible would be qualified by the addition or the modifier "knowingly." A skier would have to engage in the actions or activities "knowingly" to be held responsible for them. (Sections 4 b.(4), 4 b.(5) and 4g.) [emphasis supplied].

The arguments of the appellant must fail as he urges that the standard which is clearly set forth in the Ski Statute be ignored and a "recklessness" standard be established. Both the intent of the legislature as well as the plain language of the Ski Statute provides clear guidance as to the proper standard of care in a skier-skier conduct.

The Court should take note that Brownlee's argument that "the act was not passed in order to codify the standard of care applicable to claims between skiers," contains no supporting citation. Further, no New Jersey cases have been cited to justify Brownlee's demand that the Ski Statute should be ignored and a new common law standard of recklessness created in a skier-snowboarder collision.

Brownlee ignores the plain language of the N.J. Ski Statute that its purpose is "to make explicit a policy of this state which clearly defines the responsibility of ski area operators and skiers." N.J.S.A. 5:13-1 [emphasis supplied].

Brownlee takes exception in his arguments to Judge McGovern's citation of Brett v. Great American Recreation, 144 N.J. 479, 502 (1996), where the Supreme Court stated, "[w]here the ski statute properly applies, the legislature intended to completely displace the common law with regard to the statutory defined parties." Brownlee argues that the next sentence of that opinion is dispositive on the main argument of the appeal. He directs this court to the next sentence which states, "[t]he ski statute was intended to clearly define the responsibility of ski area operators" as if this sentence was the penultimate cap to his argument. If it is, it is merely another reason why his argument must fail. Judge McGovern's opinion contains and refers to the full context from Brett where it states:

The legislative committee statement stated as a primary concern the uncertainty of operator liability following Vermont's Sunday case. See Committee Statement, supra. That interest would have been poorly served had the Ski Statute merely supplemented the common law. By codifying, as modified, fundamental principles of **negligence** as they apply to skiers and ski area operators, the Legislature provided certainty by occupying the entire field. (emphasis added) Id. at 502.

It is respectfully submitted that there is no dispute that the N.J. Ski Statute applies to the issues before this court. In Judge McGovern's reasons placed on the record on August 31, 2010, referred to as part of the reasons for his decision in his

Order, Judge McGovern recognized the possibility exists that Brownlee could be found negligent, not negligent or not reckless, but regardless the standard of his conduct is set forth in N.J.S.A. 5:13-1 which "**clearly defines a responsibility of ski area operators and skiers.**" Judge McGovern then cited 5:13-4(b)(4) which required skiers not to knowingly engage in any act or activity by skiing or frolicking which injures other skiers while such skiers are descending in a trail or standing or congregating in a reasonable manner, and due diligence shall be exercised in order to avoid hitting, colliding with or injuring any other skier or invitee. (MC Da8,T42:7-46:25)

Thus, Judge McGovern concluded that the legislature imposed certain duties on skiers at least in part to minimize the risk of injury to other skiers and a jury must determine if those duties were breached. His decision was correct and the appellate opinion properly sustained his decision by referencing the sections defining the standard of conduct.

POINT II.

SCHICK AND CRAWN DO NOT SUPPORT APPLICATION OF A RECKLESSNESS STANDARD IN THE FACE OF THE NEW JERSEY SKI STATUTE

The Supreme Court's decisions in Crawn v. Campo, 136 N.J. 494 (1994) and Schick v. Ferolito, 167 N.J. 7 (2001) which established a recklessness standard of conduct for civil claims among participants in certain recreational sports, do not

dictate that the common law standard must be applied to recreational sports such as skiing which have a statute specifying duties of the participants. The sports which were the gravamen of the Schick and Crawn cases had no legislation that applied to them. Further, the question in those cases was whether a mere negligence standard should apply or recklessness. Both cases are distinguishable since here the legislature has established the standard - knowingly.

A criminal statute, N.J.S.A. 2C-2-2, provides definitions of "knowingly" and "recklessly" and is instructive in showing the difference between the two for the purposes of our inquiry. The terms are defined therein as follows:

. . . **Knowingly.** A person acts knowingly with respect to the nature of his conduct or the attendant circumstances if he is aware that his conduct is of that nature, or that such circumstances exist, or he is aware of a high probability of their existence. A person acts knowingly with respect to a result of his conduct **if he is aware that it is practically certain that his conduct will cause such a result.** "Knowing," "with knowledge" or equivalent terms have the same meaning. . . .

. . . (3) **Recklessly.** A person acts recklessly . . . when **he consciously disregards a substantial and unjustifiable risk that the material element exists or will result from his conduct.** The risk must be of such a nature and degree that, considering the nature and purpose of the actor's conduct and the circumstances known to him, its disregard involves a gross deviation from the standard of conduct that a reasonable person would observe in the actor's situation. "Recklessness," "with recklessness" or equivalent terms have the same meaning.

The standard of the N.J. Ski Statute for skier conduct therefore is more than mere negligence because it requires an awareness that the event is practically certain to occur. However, that knowingly standard is less than recklessness which requires a conscious disregard of a substantial and unjustifiable risk.

The jury must therefore determine whether Brownlee 'knowingly' breached one of the duties imposed on a skier by the New Jersey Ski Statute and whether and to what extent his actions caused Mr. Angland to lose control and ski off trail. The jury must determine whether Brownlee breached any of the duties that apply to him and whether when he suddenly veered to skier's left on that day whether there existed on his part an awareness that a collision with another skier was practically certain to occur.

This standard is certainly appropriate under the circumstances for a jury to decide the liability of Mr. Brownlee. There is no need to abandon the legislative scheme to adopt the common law recklessness standard.

Moreover, by adopting this standard as urged by petitioner the existing duties applying to snowboarders and to skiers will certainly be eroded to the general detriment of safety on the trails. There are specific duties set forth in the statute which mirror the "Skiers Responsibility Code" which include

yielding to skiers further down the trail, maintaining control of speed and course at all times which arguably will be eroded if a skier is only held responsible for actions on the trail if it can be shown that *"he consciously disregarded a substantial and unjustifiable risk that the harm will result from his conduct."*

Further, the petitioner argues that the statute should only apply when a skier sues an operator. As to simply a skier-skier collision where there are no claims against the operator, Brownlee argues that the Ski Statute should not apply at all. This argument however, ignores the structure of the Ski Statute which permits the application of comparative negligence principles in certain cases where a plaintiff proves a statutory violation by the ski area operator. Further, the argument ignores the primary fact that the case at bar did involve claims against a ski area operator.

POINT III.

CASE LAW FROM OTHER JURISDICTIONS IS DISTINGUISHABLE AND NOT CONTROLLING IN THE FACE OF THE NEW JERSEY SKI STATUTE

The petitioner has cited cases from other jurisdictions in support of the proposition that the New Jersey Ski Statute should be held inapplicable to the standard of care in skier-skier collisions. However, of those states that have ski

statutes¹ there is no common current in the law which supports the position espoused by the petitioner in this matter. Where no ski statute exists in states with ski areas, the common law recklessness standard does appear to be applied with more frequency.² The one common theme in the cases and statutes for

¹ Alaska Stat. § 09.65.135 (1983); Colo. Rev. Stat. § 33-44-101 to 114 (1984) and Colo. Rev. Stat. Ann. (West Supp. 1991); Conn. Gen. State § 29-201 to -214 (1985); Idaho Code § 6-1101 to 1109 (1990); ME. Rev. Stat. Ann. Tit. 26 §§ 488-490 (1984); Mass Gen. Laws Ann. Ch. 143, § 71 H-S (West 1991); Mich. Comp. Laws Ann. § 408-321-344 (West) 1985); Mont. Code Ann. § 23-2-731 to 736 (1991); Nev. Rev. Stat. § 455A.010-190 (1991); N.H. Rev. Stat. Ann. § 225-A:1 to :26 (1989); N.J.S.A. § 5:13-1 to -11 (West. 1989); N.M. Stat. Ann. § 24-15-1 to -14 (Michie 1991); N.Y. Labor Law § 865-868 (McKinney 1988); N.C. Gen. Stat. § 99C-1 to -5 (Supp. 1985); Ohio Rev. Code Ann. § 4169.01 to .99 (Balwin 1990); OR. Rev. Stat. § 30.970 to .990 (1988); 42 Pa. Cons. Stat. Ann. § 7102(c) (1982); R.I. Gen. Laws § 41-8-1 to -4 (1990); Tenn. Code Ann. § 68-48-101 to -107 (1987); Utah Code Ann. § 78-27-51 to -54 (1992); Vt. Stat. Ann. Tit. 12 § 1037 (Supp. 1991); Wash. Rev. Code Ann. § 70.117.010 to 040 (West Supp. 1992); W. Va. Code § 20-3A-1 to -8 (1988); Wis. Stat. Ann. § 895.525 (West Supp. 1991).

² A California case is instructive and typical where no ski statute is in place. In Towns v. Davidson/Mammoth, 147 Cal.App.4th 461, 54 Cal.Rptr.3d 568 (2007), a case involving a collision between a guest and an on duty ski host (Davidson) at Mammoth Mountain Ski Area in Mono County, California. The Court of Appeal, Third Appellate District, affirmed the trial court's granting of summary judgment, holding that having employees skiing on the slopes did not increase the inherent risk of collisions and that while the employee was skiing fast and aggressively, it did not constitute recklessness. The burden is on the plaintiff to show conduct was "so reckless as to be totally outside the range of the ordinary activity involved in the sport." "Conduct is totally outside the range of ordinary activity involved in the sport (and thus any risks resulting from that conduct are not inherent to the sport) if the prohibition of that conduct would neither deter vigorous

skiing states is that collisions between skiers (and snowboarders) are considered to be inherent risks of the sport. In each of the cases cited by the petitioner, the facts of this matter and the established law of New Jersey are distinguishable.

A. CONNECTICUT.

While Brownlee cites Jagger v. Mohawk Mountain Ski Area, 849 A.2nd 813 (Conn. 2004) for the proposition that the Connecticut Supreme Court ruled that its state's ski statute, "... is not implicated in the context of the negligence action between skiers," the Jagger case actually supports Judge McGovern's correct ruling in this matter.

participation in the sport nor otherwise fundamentally alter the nature of the sport."

The plaintiff, Karen Towns, presented testimony from an off duty California Highway Patrol officer who witnessed the collision along with an expert declaration in an attempt to create a triable issue of fact as to recklessness. The court concluded that Davidson was skiing quickly and aggressively (25 to 30 mph) and likely made a sharp left turn without looking to see where he was going. He saw Towns at the last second but couldn't avoid the collision.

The court stated: "These facts do not establish conduct totally outside the range of ordinary activity involved in the sport of skiing. . . . Moreover, were we to conclude Davidson's conduct was so reckless as to be totally outside the range of ordinary activity involved in the sport of skiing, we would call into question vigorous skiing and fundamentally alter the nature of the sport. For many, the thrill of the sport is to ski as fast and as aggressively as reasonably possible. Assigning liability to Davidson on these facts would eliminate that aspect of the sport."

Connecticut's statute, § 29-214, provides as follows:

It shall be a special defense to any civil action against an operator by a skier that such skier: (1) did not know the range of his own ability to negotiate any trail or slope marked in accordance with the subdivision (3) of Section 29-211; (2) did not ski within the limits of his ability; (3) did not maintain reasonable control of speed and course at all times while skiing; (4) did not heed all posted warnings; (5) did not ski on a skiing area designated by the operator; or (6) did not embark on or disembark from a passenger tramway at a designated area. In such civil actions the law of comparative negligence shall apply. Id. at 832.

In Jagger, one of the issues the Connecticut Supreme Court was presented with was, "does the fellow participant immunity against liability for sports injuries caused by negligence recognized in Jaworski v. Kiernan, 241 Conn. 399 (1997), apply to collisions between a skier and a ski instructor caused by the instructor's negligence." Id. at 816.

The Jagger court observed that Jaworski concluded that co-participants in a team athletic contest involving contact as a part of the game owe one another a duty merely to refrain from reckless or intentional misconduct. However, the Court then held that the Jaworski standard should not be extended to the sport of skiing. [emphasis supplied.] The court held that the standard of care implicated in the context of the sport of skiing is that of a duty to refrain from unreasonable conduct

and that liability may attach to negligent behavior. Id. at 829-830.

B. VERMONT

In the Vermont case of Dillworth v. Gambardella, 970 F. 2d. 1113 (1992), the plaintiffs argued that the affirmative defense provided by the Vermont Ski Statute should be available only to operators of ski areas and not to other skiers. The Dillworth appellate court rejected this argument holding that the Vermont Ski Statute was worded to place focus upon plaintiffs and the risks they assume without restrictions as to the identity of eligible defendants. Id. at 1120. Comparing the decision in Dillworth to the present matter should result in the same conclusion.

C. NEW YORK.

Brownlee's comparison of New Jersey's Ski Statute to New York is also misplaced. Brownlee cites New York's Ski Statute, McKinney's General Obligation Law, § 18-107, where it states:

Unless otherwise specifically provided in this article, the duties of skiers, passengers, and ski area operators shall be governed by common law.

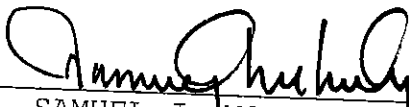
The New Jersey Legislature specifically chose not to apply common law language in skier-skier collisions as it is not present. It is reasonable to assume that New Jersey knew the

Ski Statute language from New York Ski Statute and chose not to follow their course.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that that The New Jersey Ski Statute governs liability of individual skiers by establishing a "knowingly" standard of violating statutorily defined duties of skiers.

Respectfully submitted,
HUESTON MCNULTY, P.C.

By: 
SAMUEL J. MCNULTY, ESQ.

Dated: April 25, 2012

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Attorneys for Defendant-Respondent, Mountain Creek Resort, Inc.

DANIEL ANGLAND and DANIEL
WHEELER, CO-ADMINISTRATORS OF
THE ESTATE OF ROBERT E.
ANGLAND, and CHARLES JOHNSON
IV, ADMINISTRATOR OF THE ESTATE
OF NANCY ANGLAND,

Plaintiff,

v.

MOUNTAIN CREEK RESORT, INC., a
New Jersey Corporation and/or
ABC CORPORATION (a fictitious
name), WILLIAM TUCKER BROWNLEE,
JOHN DOE 1-5 and RICHARD ROE 1-
5,

Defendants.

MOUNTAIN CREEK RESORT, INC., a
New Jersey Corporation,

Third Party Plaintiff,

v.

WILLIAM TUCKER BROWNLEE, an
individual,

Third Party defendant.

SUPREME COURT OF NEW JERSEY
DOCKET NO.: 069461

APPELLATE DIVISION
DOCKET NO.: A-3100-10

LAW DIVISION: SUSSEX COUNTY
DOCKET NO.: SSX-L-474-08

Civil Action

CERTIFICATION OF SERVICE

I hereby certify that on April 25, 2012 the undersigned caused to be delivered via Lawyers Service an original and eight copies of defendants' notice of motion for leave to participate as a Respondent in the Supreme Court together with an original and eight copies of defendants' supporting letter brief, certifications, brief

and appendix and proposed Respondent's Supreme Court Brief and nine (9) copies of Defendant-Respondent's Appellate Brief and Appendix to the following:

Clerk of the Supreme Court
P.O Box 970
Trenton, New Jersey 08625-0970

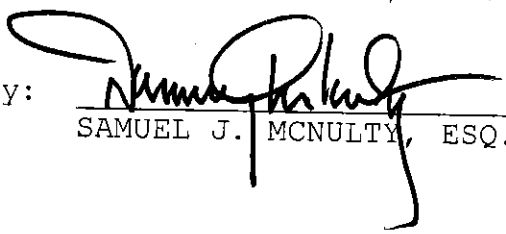
I further certify that on April 23, 2012 the undersigned caused to be delivered via Lawyers Service a copy of said notice of motion for leave to participate as a Respondent in the Supreme Court together with supporting brief, certifications and proposed Respondent's Supreme Court Brief to the following:

John Burke, Esq.
Burke & Potenza
600 Parsippany Road
Parsippany, New Jersey 07054

Phillip C. Wiskow, Esq.
Gelman, Gelman, Wiskow & McCarthy
34 East Blackwell Street
Dover, New Jersey 07801

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

HUESTON MCNULTY, P.C.
Attorneys for Defendant,
Mountain Creek Resort, Inc.

By: 
SAMUEL J. MCNULTY, ESQ.

Dated: April 25, 2012